



In the Matter of the Appeal of)
)
ALBERT L. AND ANNA D. TAMBINI)

For Respondent: Bruce Langston
Counsel

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Albert L. and Anna D. Tambini for refund of personal income tax in the amount of \$1,195.59 and \$2,160.72 for the years 1977 and 1978, respectively.

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The sole issue presented for determination in this appeal is whether appellants Albert L. and Anna D. Tambini were residents of California for portions of 1977 and 1978..

Appellants, husband and wife, were long-time residents of California prior to the years at issue. Mr. Tambini was employed by Hughes Aircraft Company of California. In August 1977, Mr. Tambini was offered a foreign assignment with Hughes Aircraft Systems International (HASI) at the Torrejon Air Base in Madrid, Spain. The assignment was described by HASI as "for an indefinite duration; however, the exact duration ... will be determined by the Program Manager." The transfer papers also noted that "[u]pon completion of this assignment, HASI will return you to Fullerton. You will be transferred into Hughes CSG with no special considerations."

In September 1977, appellants and their 12-year-old son left California for Spain. Upon their arrival in Spain, they leased an apartment, bought an automobile and secured valid Spanish driver's licenses. Their son was enrolled at the Torrejon Air Base American School. The family also enrolled in Spanish language classes. While in Spain, appellants' furniture and household effects were stored in California at their employer's expense.

While in Spain, appellants maintained savings and checking accounts in California and retained valid California driver's licenses. In addition, both Mr. and Mrs. Tambini were registered to vote in California, but this was due to the fact they had registered in a prior year.

Prior to leaving California, appellants resided in the house they owned at 2709 North Hearthside Street in Orange, California. During appellants' absence, their daughter and son-in-law lived in the house. They did not pay any rent; however, they did make all the monthly mortgage payments on appellants' behalf.

Appellants returned to California in October 1978 after Mr. Tambini's position as Quality Control Manager was deleted from the HASI contract because of budgetary considerations. Appellants reoccupied the North Hearthside Street house and Mr. Tambini sought employment with Hughes Aircraft in Fullerton.

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When appellants returned to California, their daughter and son-in-law moved out of the house. When appellants moved to Arizona in September 1980, the daughter and son-in-law moved back into the house in anticipation of an eventual purchase of the property.

Based on the information supplied by appellants, respondent determined that they were California residents for income tax purposes in 1977 and 1978 and issued notices of proposed assessments recomputing appellants' tax liability accordingly. Appellants paid the assessments under protest, and respondent treated the protest as a claim for refund pursuant to Revenue and Taxation Code section 19061.1. After further correspondence and consideration of appellants' claims, respondent denied the claims for refund giving rise to this timely appeal.

Revenue and Taxation Code section 17014, subdivision (a), defines the term "resident" as follows:

(1) Every individual who is in this state for other than a temporary or transitory purpose.

(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

Subdivision (c) of section 17014 provides that:

Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

Respondent relies on subdivision (a)(2) of section 17014 and contends that appellants were **domiciliaries** of California during 1978, and that their absence in 1977 and 1978 was for a temporary or transitory purpose. Appellants argue that they established a permanent residence in Spain in September 1977 and intended to remain there for an indefinite period of one to five years. For the reasons expressed below, we agree with respondent.

The term "domicile" has been defined as "the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning." (Whittell v. Franchise Tax Board, 231 Cal.App.2d

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278, 284 [41 Cal.Rptr. 673](1964).) A person may have only one domicile at a time (Whittell, supra), and he retains that domicile until he acquires another elsewhere. (In re Marriage of Leff, 25 Cal.App.3d 630, 642 [102 Cal. Rptr. 195] (1972).) The establishment of a new domicile requires actual residence in a new place and the intention to remain there permanently or indefinitely. (Estate of Phillips, 269 Cal.App.2d 656, 659 [75 Cal. Rptr. 301] (1969).) One's acts must give clear proof of a concurrent intention to abandon the old domicile and establish a new one. (Chapman v. Superior Court, 162 Cal.App.2d 421, 426-427 [328 P.2d 23] (1958).)

Although appellants state that they intended to establish a new domicile in Spain and, upon their retirement, in Arizona, we are convinced that they remained California domiciliaries. Appellants returned to California after approximately 13 months in Spain. They maintained significant personal and financial contacts in California, including checking and savings accounts, driver's licenses and their house. These actions indicate an intent to retain their California domicile, and appellants' actions in Spain do not present any clear proof of an intention to establish a domicile there.

Since we have concluded that appellants were domiciled in California, they will be considered California residents if their absence in Spain was for a temporary or transitory purpose. Appellants contend that Mr. Tambini's transfer to HASI in Spain was permanent in nature rather than temporary or transitory. They offer as proof for this position the fact that they severed many of their California connections upon their departure. They sold their personal automobiles and shipped most of their personal effects to Spain. Appellants also point to the fact that they established contacts in Spain, such as leasing an apartment, enrolling their son in school, and Mr. Tambini obtained a VALIDO stamp permitting him to work in Spain. Mr. and Mrs. Tambini purchased and registered an automobile and obtained Spanish driver's licenses.

As we have stated in previous decisions, respondent's regulations indicate that whether a taxpayer's presence in or absence from California is for a temporary or transitory purpose is essentially a question of fact, to be determined by examining all the circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).) The general rule is stated in the regulations as follows:

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. . . [I]f an individual, is simply passing through this State on his way to another state or-country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to California with no definite intention of leaving shortly thereafter, he is in this State for other than temporary or transitory purposes

(Cal. Admin. Code, tit. 18, regs. 17014, subd. (b).)

The examples listed in the regulations are equally relevant in assessing the purposes of a California domiciliary's absence from the state, (Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., March 25, 1968.)

The regulations also reveal that the underlying theory of California's definition of "resident" is that the place where a person has his closest connections is the place of his residence. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (b).) In accordance with this regulation, we have consistently held that the contacts which a taxpayer maintains in this state and other states or countries are important objective indications of whether the taxpayer's presence in or absence from California was for a temporary or transitory purpose. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) In cases such as the present one, where a California domiciliary leaves the state for business or employment purposes, we have considered it particularly relevant to determine whether the taxpayer substantially severed his California connections upon his departure and took steps to establish significant connections with his new place of abode, or whether he maintained his California connections in readiness for his return. (Compare Appeal

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of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975, and Appeal of Christopher T. and Hoda A. Rand, Cal. St. Bd. of Equal., April 5, 1976, with Appeals of Nathan H. and Julia M. Juran, Cal. St. Bd. Of Equal., Jan. 8, 1968, and Appeal of William and Mary Louise Oberholtzer, Cal. St. Bd. of Equal., April 5, 1976.)

In urging that appellants' absence from California was temporary or transitory in character, respondent relies principally upon the fact that appellants retained significant contacts with California, including the ownership of the family house in Orange, California, and that Mr. Tambini's transfer to Spain was only a temporary assignment.

In the instant case, although it appears that appellants did establish some connections in Spain, these appear to have been done for convenience and do nothing to show that the absence was not temporary or transitory in nature. Additionally, appellants did not sever all connections with California upon their departure since they retained their **California house** and stored many of their personal effects in California. Appellants' stated reason for not selling their house was their desire to sell it to their daughter, which they eventually did after their return to California when their daughter could afford the down payment. In supporting a determination that taxpayers were residents, respondent has, in the past, found it more significant that the taxpayers kept their home **unoccupied** in a state of readiness for their eventual return rather than leasing the house to unrelated third parties while away. (See Appeals of Nathan H. and Julia M. Juran, supra.) Although appellants did not leave their **house** unoccupied, appellants' daughter and son-in-law were allowed to occupy the home and pay the mortgage payments. There is no indication whether or not these payments were the equivalent of what the fair market rental value of the house would have been. The fact that these family members were allowed to occupy the home and had to move out at appellants' convenience upon their return is some indication that appellants viewed their overseas assignment as temporary or transitory in nature.

Finally, and most persuasive, appellant-husband's job assignment in Spain was by its very nature temporary in that it clearly contemplated a return to the United States after completion of the project, and provided round-trip transportation and moving expenses. In fact, the original transfer papers talk in terms of completion

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of the assignment and appellant-husband's eventual return to Fullerton rather than stressing any long-term or permanent aspects of the assignment.

For the above reasons, we conclude that appellants were outside this state for a temporary or transitory purpose during their stay in Spain and, therefore, continued to be California residents throughout the period in question. Accordingly, respondent's action must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Albert L. and Anna D. Tambini for refund of personal income tax in the amount of **\$1,195.59** and **\$2,160.72** for the years 1977 and 1978, respectively, be 'and the same is hereby sustained.

Done at Sacramento, California, this 28th day of February , 1984, by the State Board of Equalization, with Board Members Mr. Nevins, **Mr.** Dronenburg, Mr. Collis, Mr. Bennett and **Mr.** Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9